

# **Oppose H.R.5455 and Improve Transportation Project Delivery Under TEA-3 with Environmental Stewardship**

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Good morning Mr. Chairman and members of the subcommittee. On behalf of Environmental Defense and its 300,000 members, I am testifying about H.R. 5455, "Expediting Project Delivery to Improve Transportation and the Environment Act."

## **I. Strongly Oppose H.R. 5455**

**A. Core Environment Laws are Under Attack.** The National Environmental Policy Act (NEPA) has for 34 years helped assure for the public and local officials the right-to-know about the effects of major federal agency decisions before final action and offered the public a say in those decisions. We strongly opposed H.R. 5455 because it undermines this and other core environmental laws, harming public health, endangered species and threatened wetlands through the following:

- **Deadlines.** H.R. 5455 imposes arbitrary, unreasonable review deadlines on state and federal agencies, preventing scientists from examining projects carefully. Biologists may take just a few days to judge the impacts of a new bike path, but when you're building a 10-lane bridge across a river and constructing off-ramps through a wetlands filled with birds, things are not so simple. H.R. 5455 is blind to the complexities facing highway planners, scientists and our communities, demanding that participating agencies review voluminous documents in little time, regardless of the size and complexity of the project. Deadlines of 30 to 60 days are rarely sufficient to fully consider and consent on the major questions of impact exposed throughout the NEPA process.
- **Priorities.** H.R. 5455 limits subject matters covered in environmental impact statements and environmental assessments and makes transportation objectives paramount over natural resource agencies' missions to protect public health and the environment. It requires agencies to give top priority to transportation projects, forcing them to dedicate limited personnel and resources to reviewing transportation projects before carrying out objectives under their own mandates.
- **Narrow Objectives.** H.R. 5455 defines the objectives of all transportation projects in the narrowest terms, placing the entire focus on mobility, economic growth and national security and ignoring important goals such as equity, environmental justice, and environmental stewardship.
- **Misplaced Authority.** H.R. 5455 puts distant, unaccountable federal highway bureaucrats in charge of determining the purpose and need of each project and alternatives to be considered, undermining the important role of state and local officials and resource agencies in this process.
- **Limiting Judicial Review and Information Considered.** H.R. 5455 limits the time the public has to challenge any decision of transportation agencies to only 90 days after a decision has been released, rarely sufficient time to prepare an appeal. H.R. 5455 bars consideration by agencies and U.S. courts of any new information or comments submitted after deadlines have passed.

- **Weakening Protection of Resources.** H.R. 5455 weakens long-standing protections for historical sites, parks and wildlife refuges. It undermines resource managers and the public by granting transportation agencies authority to determine the value of these resources and the significance of impacts. It eliminates protection for thousands of historic sites on state and local registers of historic places. Existing transportation law prohibits taking historic sites for roads unless there is no prudent and feasible alternative to their use. H.R.5455 deletes this substantive protection and replaces it with a series of subjective determinations made by transportation officials that road projects will not cause significant impacts on historic places, and weakens the process by which such significant impacts will be determined.

**B. Environmental Reviews Not A Major Source of Delay.** H.R. 5455 fails to acknowledge or address the true causes of delay in transportation projects. FHWA surveyed transportation agencies and found 63% of delayed projects are held up by a lack of funding, low priority, local controversy and complexities of the project. Instead of improving project delivery, H.R. 5455 would encourage development of more poorly planned, poorly designed highway projects with adverse impacts on communities and the environment, spurring conflict that hinders transportation progress.

**C. Legislation to Expedite Project Reviews Is Unneeded.** Actions by the federal government, including the President's Executive Order of September 19, 2002, demonstrate that a continuing set of administrative initiatives are underway to help foster better interagency coordination in the project review process. These efforts should be directed towards fostering better environmental stewardship by transportation agencies to foster consensus that gets projects built quickly with broad public support. Speeding up project reviews for the wrong projects or for badly designed projects often backfires on the project sponsors and leads to greater conflict and delay, hindering project delivery.

**D. TEA-21 Reauthorization: Opportunity for Stewardship Through Integration of Planning and Project Reviews.** Congress should encourage adoption of transportation planning and NEPA administration approaches demonstrated to produce less controversial decisions that more effectively advance environmental and public health protection, livable communities, and environmental justice. We draw your attention below to best practice models for progress in NEPA administration and environmental stewardship, current practices and proposals that threaten to undermine such progress, and key areas where performance must be improved to help improve project delivery and stewardship.

Especially in the transportation arena, we believe there are many benefits to be gained from better integration of the transportation planning and NEPA project review process. But it is vital that this integration be founded on the adoption of best-practice analysis methods to consider secondary, indirect, cumulative, and distributive impacts and the expansion of effective opportunities for informed, continuous, meaningful involvement of all stakeholders in planning and decision-making. We encourage greater opportunities and requirements for agencies to use programmatic and tiered analysis and performance-based planning and program monitoring to facilitate such more effectively integrated approaches to planning, decision-making, and ongoing environmental management.

## II. Key Areas for Attention in Improving Transportation NEPA Analysis

### A. Project Segmentation and Use of Constrained Study Area Leads to Inadequate

**Consideration of Integrated Transportation/Land Use Alternatives.** In too many cases, large highway projects are being segmented into smaller pieces for separate impact analysis, ignoring the cumulative effects of the larger set of investments on land use, travel behavior, pollution, and natural resource systems. This is an issue that must be considered when thinking about more effective use of programmatic reviews, categorical exclusions, and adaptive management, monitoring, and evaluation plans.

Better environmental stewardship could be a product of a tiered NEPA process that undertook relatively fewer but far more comprehensive reviews of highway projects, with more effective consideration of secondary, indirect and cumulative impacts, such as induced land use and travel effects, using state-of-the-art analysis tools. Combining a number of smaller corridor-level NEPA studies of proposed road expansions into a larger sub-regional or regional NEPA analysis of alternative transportation investments, management and pricing strategies, and growth management plans could reveal a much wider array of effective demand management, transit investment, system management, and partial build scenarios that could avoid major adverse impacts that typically result from major highway system expansion schemes. Such approaches can provide effective tiered analysis to inform later corridor level evaluations of detailed project-level alignment alternatives and mitigation strategies. With care, products of state-of-the-art planning practices with exemplary public involvement should be usable in partial satisfaction of NEPA requirements.

Substantial progress can be made in reducing project delays by coordinating conservation planning and transportation planning. Under the State Wildlife Grants program in the FY2002 Interior Appropriations Act, states are now receiving federal funding that can be used to develop statewide biodiversity conservation plans. State natural resource agencies are awarded formula-based grants with the requirement that it complete a comprehensive wildlife conservation plan by 2005.

Transportation plans and projects will have reduced impacts on natural resources and will proceed more smoothly if they take these conservation plans into account by avoiding impacts to ecologically important lands and directing mitigation funds to the preservation of those lands. Florida's Efficient Transportation Decision-Making (ETDM) process is an example of coordination of conservation plans with transportation plans.

Better coordination of conservation plans and transportation plans can allow transportation agencies to avoid and minimize impacts to biodiversity. These conservation plans can also inform mitigation efforts, when impacts to remaining natural areas cannot be avoided. State DOTs can conduct advance programmatic mitigation and conservation banking for endangered species. In these efforts, state DOTs acquire or bank large blocks of conservation lands, from which they extract conservation credits for those projects deemed to have negative environmental impacts. Mitigation funds are used most effectively when directed toward the acquisition of lands identified as ecologically important in state or eco-regional conservation plans. Wider use of conservation mitigation and banking as part of expediting project delivery, with appropriate regulations and guidance, and with assurances proper sequencing would not be compromised can save DOTs considerable time and expense, while implementing state and eco-regional conservation goals.

The most effective way to develop environmental stewardship is to consider transportation within the context of all the systems it critically affects – land use, air and water quality, open space, habitat, community character, economic development, environmental justice, atmospheric greenhouse gases

that shape the global climate, and the equity of access to jobs, public facilities, and other opportunities for all residents. Of all the states, Oregon has pioneered the most effective integrated practices for planning and public involvement, with examples such as Portland's LUTRAQ Western Bypass subarea study and 2040 Plan, discussed below. Other regions, such as the Salt Lake City area, have also begun to take steps toward this end, exemplified in the Envision Utah process, providing another example of integrated comprehensive evaluation of alternative transportation and land use scenarios that could support an effective first tier NEPA review for major transportation investments. Minneapolis/St. Paul and other areas have embarked on similar vision plan processes.

But these practices are in sharp contrast to those in some other regions and states. For example, a major northeastern state metropolitan planning organization (MPO) on September 17, 2002 met to approve a new regional Congestion Management System (CMS) study. A number of new major highway system expansion projects were approved for addition to the state DOT project development pipeline following the CMS finding that the Travel Demand Management (TDM) and alternative strategies considered failed to "fully satisfy the need for additional capacity in the corridor." The CMS study offered an opportunity to consider system management, operations, demand management, pricing, Smart Growth, and partial build or targeted bottleneck alleviation initiatives. But instead, it involved a hurried broad-brush, black-box analysis by traffic consultants, directed by an engineer-dominated technical committee, with inadequate public involvement, inadequate specification of projects and alternatives, and little effort to explore the real potential for reducing and managing traffic growth. The CMS analysis failed to even take into account the adopted State Plan, which calls for preservation of open space in many areas where highways are slated for expansion under the decisions adopted last week. However, the FHWA district chief congratulated the MPO at their meeting and said what a great model this CMS process was, and how MPOs across the country are starting to emulate this procedure. The spread of such a model threatens to discredit initiatives to advance environmental stewardship by state and federal transportation agencies.

In far too many states, this remains the pattern for transportation project planning and development: pro forma bureaucratic processes that fail to engage the public or seriously consider alternatives, intended simply to advance pork-barrel capital facilities investments serving development interest, to the detriment of overall transportation system performance, environmental stewardship, and taxpayer accountability. Such efforts deserve no recognition within the NEPA process. Congress needs to strengthen planning certification reviews by creating an independent planning accreditation process. Otherwise, deficiencies in the planning process will continue to provide an insecure foundation for NEPA reviews, impeding effective and timely project delivery.

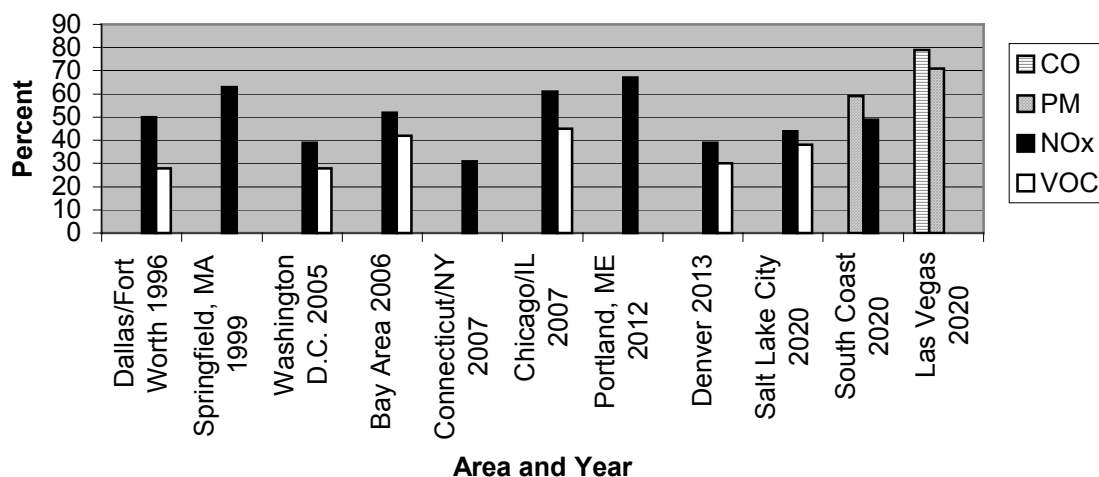
#### **B. NEPA Analysis Relies on Inadequate Conformity Process for Air Quality Impact Analysis.**

It is common practice for NEPA analyses of major highway projects to completely avoid a regional air quality impact analysis of the proposed action and meaningful alternatives to that action, claiming that because the project is drawn from a conforming transportation plan its air quality impacts are of no consequence. Yet the same conformity analyses are routinely based on inadequate computer models insensitive to induced traffic and land use impacts and the analyses frequently assume that the transportation investment will have no impact on land use patterns. Because of long delays in meeting requirements for adoption of State Implementation Plans for air quality and added delays in designating non-attainment areas under the new National Ambient Air Quality Standards, the motor vehicle emission budgets to which conformity is being demonstrated are often clearly inadequate to protect public health. Satisfying NEPA's requirements demands more than such assurances. It requires sound technical analysis of not just localized CO hot spots, but also thorough routine

evaluation of the short and longer term impacts of major projects on land use, regional air quality, and air toxics that cause cancer and other health problems.

The amount of motor vehicle pollution emitted per mile driven has fallen by more than 90 percent since 1970, but today motor vehicles still account for a major share of pollution – from one fourth to three fourths of the NOx and VOC emissions – in most non-attainment areas. Adopted or submitted SIPs show that in the attainment year and in future years going out as far as 2020, motor vehicle emissions are expected to continue to account for a large share of emissions in many metropolitan areas, as Graph 1 shows.

**Graph 1: Share of Selected Criteria Pollutants from highway sources by year and area from adopted or submitted SIPs**



The magnitude of emission reductions needed to reach healthful air quality is considerably greater than that now identified through submitted and approved SIPs. A recent EPA analysis shows that adopted and proposed measures are inadequate to bring many of the nation's largest metropolitan areas into full attainment of the NAAQS even by 2020 (<http://www.epa.gov/clearskies/maps.pdf>). Significant further emission controls will be needed also to deal with hazardous air pollutants, greenhouse gas emissions, and other environmental pollution, even with the cleaner motor vehicles produced under the Tier II and heavy-duty diesel engine rules.

Air pollution control strategies are again likely to fail to delivery healthful air quality unless steps are made now to assure timely progress in improving regional traffic and emissions analysis tools, which frequently underestimate air pollution from cars and trucks. Frequent conformity analysis – every 2 years for transportation improvement programs and every 3 years for long-range transportation plans – is vital to improving the quality of these accounting systems, just as it is vital to balance one's personal checkbook frequently to catch small errors before they compound and grow more costly.

Even with significantly cleaner cars and truck technologies, Smart Growth strategies offer the promise of avoiding - at essentially no cost – as much as one-quarter of the potential motor vehicle emissions in 2020, helping to achieve more timely attainment at less cost. If Smart Growth strategies are ignored in NEPA analyses and sprawl and highway building advance without any accountability for impacts on emissions, society will need to invest billions of dollars more in pollution abatement technologies to clean up mobile and non-mobile sources so we can achieve healthful air quality.

Moreover, roadbuilding and sprawl-based proposals do not provide the longer-term economic benefits associated with smart growth strategies, such as permanent relief from congestion for specific travel markets (i.e. commuters) and long-term preservation of capacity for congestion-sensitive markets such as freight. In many cases, smart growth and demand management solutions actually reallocate existing capacity so that travel markets which must move via roads (i.e. freight) gain capacity from other markets (i.e. commute trips) that are more flexible and can shift to other modes.

The Atlanta Olympics shows how much short-term system management can do to cut traffic and pollution. By leasing more buses and managing the system to support alternatives to driving, Georgia cut the number of cars in the morning rush hour by 23%. This cut pollution by 28% and reduced severe asthma incidents by 42%. Many regions can accomplish reductions in traffic growth and related pollution of several percent a year relative to trends with a concerted effort combining Smart Growth, pricing, and demand management strategies. NEPA analyses need to consider a full array of such strategies when evaluating major proposals for transportation infrastructure investment.

**C. Models Insensitive to Induced Traffic and Land Use, Urban Design, and Pricing Underestimates Adverse Impacts of Road Expansion Alternatives.** Recent research has shown induced traffic and land use changes to be of great importance in predicting future system performance, traffic levels, congestion, pollution, and effects on health, safety, and community livability. But most regional agencies and states use analysis tools that seriously underestimate or even ignore these effects. As a result, they underestimate the traffic growth, pollution, and sprawl accompanying highway system expansion.

Alternatives that more efficiently manage traffic growth and support compact livable communities are often not considered in NEPA reviews and face little prospect for adoption when evaluated using transportation analysis models that have no sensitivity to key attributes of these strategies, such as the walkability of communities. This often leads to ongoing conflict over the adequacy of the project evaluation and undermines the legitimacy of the project decision-making process, leading to lack of local consensus, financing problems, litigation, and at times, reversals of decisions after expenditure of significant resources on politically unviable investment strategies.

Conversely, many alternatives to new road capacity are inappropriately or inadequately modeled when they are considered in a package of improvements. For example, achieving significant and economically viable levels of transit use requires minimum residential densities within a ½ mile walk of a transit station. In many NEPA evaluations of alternatives, transit mode share is assumed and “taken off the top of” (deducted from) the trips assigned to roads. This practice is frequently used, despite no demonstration that the percentage of trips assigned to alternative modes can actually be achieved. Often, there is inadequate detail of the land use and transit measures in the package to determine whether or not the trips “taken off the top” could actually be captured by other modes. In these cases, alternative modes function as a kind of constant that is unaccounted for, but that makes the road solution look good because it does not have to account for a significant percentage of trips.

A synthesis of recent peer-reviewed research on induced traffic shows that for every 10% increase in lane miles of road capacity, we can expect roughly an 8% increase in vehicle miles traveled (i.e., an elasticity of 0.8, with the typical range varying from 0.3 to 1.0 or more). It is a straightforward matter to test and evaluate these models for their adequacy, but most NEPA analyses make use of regional travel models that have not been evaluated for their adequacy in reflecting induced traffic.

A recent analysis by the Metropolitan Washington Transportation Planning Board showed that by deferring 100 lane miles of highway expansion projects in 2002 - a 0.5% reduction in lane-miles of road capacity - Virginia *saves* \$800 million in capital costs while *cutting* NOx emissions by more than 1%, or nearly 2 tons per day, and reducing vehicle miles of traffic by 0.6%. This illustrates how the very expensive expansion of new highways typically produces a growth in air pollution emissions by spurring more traffic, rather than a reduction in emissions as often claimed by the road lobby. It illustrates how reducing expenditures on new roads is often the most cost-effective emission reduction strategy, because it avoids generating both costs and air pollution.

Transportation agencies should be required by DOT and EPA to promptly upgrade their computer models to effectively consider air quality, induced traffic, and fully-up-to-date planning factors for NEPA analysis, air quality planning, and transportation conformity analysis. EPA and DOT should promptly issue long-promised additional model guidance and regulations to assure that non-attainment areas properly account for induced land use and traffic effects in conformity analysis and SIP transportation modeling. EPA and DOT should establish best-practice planning model standards and require timely action by MPOs and other agencies to meet these standards for conformity and SIP planning. U.S. General Accounting Office, Environmental Protection: Federal Incentives Could Help Promote Land Use That Protects Air and Water Quality, Washington, DC, October 2001, GAO-02-12, page 95, notes that, "DOT and EPA efforts to improve travel-demand-forecasting models may help MPOs and communities determine the effects of transportation improvements on congestion and air quality. However...these efforts currently do not call for integrating land use or environmental components into the travel demand model...Without such integrated models, communities cannot consider the likely effects that their transportation decisions will have on land use, future growth and development, and air quality."

**D. Inadequate Attention to Distribution of Benefits and Burdens of Transportation.** To comply with Title VI of the Civil Rights Act, NEPA, and numerous executive orders on environmental justice, transportation project environmental reviews and the regional and state transportation planning process must consider the distribution of benefits and burdens of transportation decisions on minorities and other protected groups, seek to mitigate those impacts, and justify the business necessity of any adverse disparate impacts. This was acknowledged in recent guidance from the US DOT and further articulated in draft US DOT regulations on NEPA and planning that were withdrawn from further consideration by the Administration on September 19, 2002. Yet most regional and state transportation planning fails to pay much attention to the analysis or consideration of such adverse impacts and many basic transportation related data collection systems are poorly designed to accomplish tasks and the same weaknesses afflict most project-level NEPA analysis.

Better plans and projects with popular support would result from compliance with these laws. Improvements to data collection and models are needed to assure timely evaluation of accessibility of protected populations to jobs and public facilities, including education and health services, grocery stores, places of worship, and other opportunities.

**E. NEPA Analysis of Air Toxics and Induced Traffic Needed to Protect Health.** The Federal Highway Administration (FHWA) has refused to give adequate consideration to the effects of air toxics exposures and health impacts caused by highway system expansion despite strong new evidence linking these factors. NEPA and other law requires FHWA to take steps to comprehend, avoid, and mitigate these impacts as part of the transportation project review and approval process.

Travel demand and growth management strategies, pricing incentives, and other actions related to the operation, management, investment in transportation systems and related community systems can often provide very cost-effective approaches to reduce exposure of communities to air toxics and the cancer and other health risks associated with these exposures. Expansion of highways where unacceptably high air toxic exposure problems already exist will likely increase the scope of the problem by inducing traffic growth and exposures to air toxics. Cleaner technology and better fuels are not the only or best way to reduce most of these health risks, although these are an important part of the solution. While a reduction in cancer risk from 1990 to 1997 is documented in the Multiple Air Toxics Exposure Study (MATES-II) issued by the South Coast Air Quality Management District, the cancer risk in 1997 is many times higher than the level at which EPA and FHWA are required to take actions to safeguard public health from such documented risks. What had not been firmly established by sound scientific research prior to the MATES-II results is that air toxics reach concentrations in the ambient air in the vicinity of heavily traveled highways that present cancer risks of *at least 1 in 1,000 to 1 in 650*, i.e., levels far greater than the threshold for mitigation established by EPA's cancer risk policy and federal agency policies generally.

EPA's cancer risk policy requires that pollutants be reduced when risks exceed 1 in 10,000 for the maximally exposed individual. These high cancer risks for nearby residents, and even higher risks for those living adjacent to roadways, far exceed the risk levels adopted by EPA and Congress in setting national health standards, and are unacceptable to the residents of these neighborhoods. EPA has summarized the consensus cancer risk policy of federal agencies as requiring careful assessment of measures to reduce cancer risks when the population risk is greater than 1 in 1 million.

Diesel emissions are the largest source of toxic air pollutants emitted from mobile sources and the EPA heavy-duty diesel rule will eventually reduce those emissions substantially. But because of the long-delayed timeframe for implementation of the heavy-duty diesel rule and the very long lifetime of diesel engine equipment, barring major new pollution control initiatives, it will take decades to achieve the substantial emission reductions required to protect public health from toxic air pollutants from these motor vehicles. While technology and fuels will do a lot to reduce these risks, public health will be best protected by a program that combines such initiatives with better strategies to manage the demand and use patterns of motor vehicles – both diesel and non-diesel – and to manage exposure of the public to these emissions. This must include consideration of how changes in transportation investments – such as highway expansions – will affect the amount of traffic emitting toxic air pollutants, and whether alternative investments might better satisfy mobility objectives while avoiding or mitigating these adverse health impacts. As the example in Washington, DC, cited above shows, reducing highway system expansions can produce cost savings and reductions in pollution.

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., requires a review of the harmful effects of exposure to these motor vehicle pollutants generated by highways. FHWA has violated both NEPA and the requirements imposed by 23 USC §109(a) and (h) and 23 CFR §771.105 to assess and mitigate the adverse effects of air pollution from highway projects in a number of cases, such as the proposed widening of US 95 in Las Vegas.

In considering whether technology clean up vs. demand management and improved transportation system planning should be preferred strategies for avoiding or mitigating health impacts of transportation, it is useful to consider the economic costs of highways due to public health impacts. The Department of Transportation has estimated the national aggregate health costs of criteria air pollutants from highways at \$40 to \$68 billion per year. Table 9, Addendum to the 1997 Federal Highway Cost Allocation Study Final Report, U.S. Dep't of Transportation, Federal Highway



Administration (May 2000). The methodology developed in the Addendum to the Highway Cost Allocation Study to estimate the costs of adverse health effects from air pollution provides a basis for estimating the adverse health effects, and costs, attributable to emissions from specific highway corridors. The Addendum assessed only the health effects attributable to pre-1997 criteria pollutants, and did not include the health effects attributable to toxic air contaminants emitted from motor vehicles. If FHWA intends to justify highway expansions by comparing the value of increased travel against the costs of providing that capacity, a fair assessment of the health costs to the community must be part of the calculus. In addition, that kind of cost-benefit calculus should be applied to both the highway option and reasonably available alternatives that can reduce or mitigate the adverse impacts on health.

**F. Inadequate coordination and consideration of intermodal system management alternatives and impacts in NEPA reviews for airports, railways, interstate highways, ports, and intermodal infrastructure projects and plans.** Planning and project reviews for infrastructure relating to airports, interstate highways, ports, railways, intermodal facilities, and other projects that serve interstate travel and commerce should be enhanced through efforts to assure more effective, timely intermodal interstate transportation planning and demand management. Such planning and reviews are now fragmented and miss many opportunities for more effective system management and operations.

Congress should require in TEA-3 more widespread coordination between states, modes, authorities, and levels of government so that such planning and project review activities can better consider intermodal and demand management alternatives and secondary, cumulative, and indirect impacts. By considering demand management strategies, such as auctioning or time-of-day pricing of airport landing slots, time-of-day highway tolls and HOT lanes, improved integration of intercity rail, bus, and aviation services, development of high speed rail services, and improved regional transit connections between airports and city centers, such a process could produce consensus on construction of a sound mix of capacity, service enhancement, and demand management projects.

### **III. Principles for Effective NEPA Administration**

More expedient project delivery – and better projects -- can best be realized through more sensible planning, early stakeholder involvement and simply taking advantage of existing programs. Better administration of current environmental laws by state and federal agencies and project sponsors is the key to success, not changes to law. The following principles that can help foster success:

**A. Planning** -- Transportation planning which considers communities and protected resources such as public parks, wildlife habitat, historic sites and scenic areas will produce better projects that are less likely to incur opposition and delay. Integrate existing resource protection efforts into transportation planning to ensure future projects will avert impacts. Taking protected resources into account at the beginning, and planning accordingly will both protect resources and facilitate project approvals. Effective policy would support efforts to develop, harmonize, and coordinate state and local transportation, environmental, resource and land use planning.

**B. Involvement** – Involve the affected community early, substantively and continuously throughout the planning and project review process. Since so much delay is attributed to local controversy and lack of support, it makes sense to design projects with significant public participation in order to build support and improve acceptance. Promote more public involvement in transportation plans.

**C. Coordination** – Mandate better coordination among participating agencies. Direct state DOTs to work collaboratively with state and federal resource agencies, municipalities and other interested parties to develop environmentally sound transportation projects and plans. States can ensure participation by employing TEA-21’s under-utilized §1309(e), which authorizes compensation for resource agencies’ increased transportation project review workload.

**D. Classification** – Properly classify projects for environmental review. Too often, problems in project reviews arise because agencies waive appropriate environmental review for complex projects with multiple impacts by classifying it as a Categorical Exclusion or Environmental Assessment, causing later legal or regulatory delay as critics seek to challenge a flawed administrative process.

**E. Alternatives and Impacts** – Effectively consider a wide variety of alternatives, as well as secondary, induced and cumulative impacts in project planning, design and review. The best process engages stakeholders in identifying partial build alternatives, travel demand management strategies, alternative investments, and other approaches to avoid or mitigate negative impacts. Build consensus for action by addressing broader stakeholder concerns, rather than imposing narrowly focused objectives on the community. Many delays, especially for controversial projects, arise when agencies have failed to effectively consider impacts on specific populations or neighborhoods, or the effects of transportation infrastructure projects on land use, travel behavior and public health.

#### **IV. Oregon: A Cluster of Best Practices Case Studies**

While other states offer good examples, Oregon offers a number of the best practices that we most strongly commend to Congress for closer examination as national models to promote in TEA-3:

**A. LUTRAQ: Model for Public Involvement, Improving Analysis Methods, and Considering Reasonable Alternatives in a NEPA Review.** The “Making the Land Use Transportation and Air Quality Connection”, or LUTRAQ initiative was launched following a decision by Oregon DOT to build the Western Bypass freeway around Portland. The group 1000 Friends of Oregon, initiated their own alternative transportation planning process, enlisting support from foundations, regional and state planning and transportation agencies, U.S. EPA, and FHWA. Through a collaborative process with outside consultants, government agencies, and stakeholders, the MPO’s computer transportation analysis models were upgraded to enhance their sensitivity to pedestrian friendliness and transit accessibility impacts on travel behavior. The enhanced analysis tools were used to evaluate a transit-oriented development transportation-land use scenario for the west side of Portland. Stakeholders helped shape alternatives and consider impacts of various alternatives through an extensive public outreach program.

Ultimately, Oregon DOT adopted the LUTRAQ alternative, which included new light rail lines, minor local road improvements, pedestrian and bicycle enhancements, and changes to local zoning, as the preferred option in their 1995 *Western Bypass Study Alternatives Analysis*. ODOT decided against construction of the Western Bypass freeway because it would produce much more sprawl and pollution. The transit oriented development strategy was shown to produce better overall environmental and transportation system performance with improved travel options.

**B. Portland 2040 Plan: Integrated Regional Planning and Performance Monitoring.** LUTRAQ helped lay the foundation for the development of the 2040 Growth Concept, which was initiated by the Portland regional government, Metro, in 1990. The Metro charter for growth management was affirmed by the region’s voters in 1992. The Growth Concept was adopted by Metro in 1995. It was

further articulated as the 2040 Regional Framework Plan in 1997, and reaffirms the region's commitment to managed transit-oriented mixed-use growth and open space protection. This integrated land use, transportation, and natural resource plan for the Portland region provides an outstanding U.S. example of programmatic evaluation of alternatives for their impacts, with outstanding use of public involvement strategies. Metro programs transportation improvements based on their support to build the plan's main streets, town centers and regional centers.

**C. Oregon Transportation Planning Rule: Performance-Oriented Interagency Coordination Framework.** The Oregon Land Conservation and Development Commission has adopted a Transportation Planning Rule that integrates land use, transportation, and natural resource planning at the state, regional, and local level. The Rule requires transportation system plans for local and state government, as well as mandating coordination of system management and development between various levels of government, with performance measurement to established goals. This outstanding approach should be adapted in TEA-3 planning requirements and incentives.

**D. Oregon: Statewide Conservation Planning GIS.** Oregon, Florida, New Jersey, Maryland, and Massachusetts, have developed comprehensive statewide GIS-based inventories of sensitive habitat, ecosystems, and other protected resource elements to facilitate more effective ongoing environmental system management, early avoidance of impacts in the planning and project development project, and effective monitoring of environmental stewardship and system performance.

**E. Oregon Travel Model Improvement Program: Assuring Timely Progress On Integrated Transportation-Land Use-Economic Models for Policy and Project Planning.** Oregon DOT works with local jurisdictions to develop state-of-the-art transportation and land use models. These integrate transportation, land use and economics to provide a reliable way to forecast and evaluate policy and future growth. The Oregon Model Improvement Program builds interactive, integrated technical tools, creates a forum to address modeling issues, guides research through cooperative efforts of various agencies, and conducts education and outreach. Congress should boost support for the comparable federal Travel Model Improvement Program.

**F. Oregon Mobile Source Air Toxics Study: Demonstrating Best Practice Methods.** Portland Metro and EPA are collaborating to demonstrate the capacity to evaluate health impacts and exposures related to mobile source air toxics, linking existing transportation models, existing Mobile 6 models, and existing air pollution dispersion models to better understand and mitigate the impacts of local hot spots. The techniques being used have also been used in Houston, Philadelphia, and elsewhere and documentation is available on the EPA web site at [www.epa.gov/otaq/toxics.htm](http://www.epa.gov/otaq/toxics.htm). This experience demonstrates techniques that should be used for every NEPA transportation appraisal where significant induced traffic and related air toxics emission increases are likely possible outcomes.

**G. An Oregon Perspective on Environmental Reviews: Helping Advance Good Projects.** Testimony offered on September 19, 2002, by transportation and housing project developer and former Portland City Transportation Commissioner Charlie Hales to the Senate Environment and Public Works Committee, provides a valuable perspective on NEPA administration:

*My community's experience shows that the best way to "streamline NEPA" is to go through the planning process right the first time and only once. We have made a sustained commitment to comprehensive land use and transportation planning. We work collaboratively to integrate the requirements and address the concerns of federal and state regulatory agencies in our plans and*

*projects. We then ask those agencies to sign off early on purpose and need. We base our project priorities on the plans. We are thrifty in our expenditure of public monies. We build transportation projects on time and on budget. And our transit projects in particular outperform their projections.*

*...In the ten years I served as a Portland City Commissioner and as Portland's representative to the MPO for our region, we built dozens of major highway, transit, sewer, and water projects, and other major facilities. In almost no case have projects been held up by appeals, litigation or multiple trips through the NEPA process or through state or local review... We have taken the coordination, public involvement and alternatives analysis goals of NEPA and TEA-21 to heart. We plan, we work for consensus, and we follow our plans. We are a case study that demonstrates that good administrative practice gets good treatment under the federal requirements. We demonstrate that even in a city with Endangered Species swimming through its downtown, federal and state agencies can reach agreement and construction of public works and private development can continue apace.*

*...If you take the commonsense planning, coordination and public involvement requirements of these federal policies seriously, they don't get in your way. If you are committed to the spirit of these laws, the particulars are relatively unimportant. And as a local or state official, your time is much better spent in genuine consensus-building and integrated planning than in complaining about the regulations or defending against citizen suits. Our experience is that if citizens participate in the planning process and have a clear buy-in and responsibility for commitment, there are few suits... A community which first, engages in real, comprehensive, and sustained land use planning, and which makes infrastructure decisions consistent with that plan, and conducts a genuine and genuinely open process of alternative analysis not only gets through the environmental review process with a minimum of difficulty; the people of this community own the results of the planning process and get to live in a better place.*

Congress should closely consider these lessons from Oregon's best practices in assembling TEA-3.

The problem with project delivery is not NEPA, but the manner in which some states administer their transportation plans and projects. We hope this Subcommittee will set aside H.R. 5455 as an ineffective approach and instead take steps in TEA-3 to foster wider adoption of environmental stewardship practices by states. Let's improve planning and project delivery that promotes an outstanding transportation system for all Americans which protects and enhances the environment and great communities. Thank you for your attention.